



Francine Busby For Congress

P.O. Box 712, Cardiff, CA 92007 (760) 753-6300 (866) 632-3066 www.busbyforcongress.com

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

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FEDERAL ELECTION COMMISSION
OFFICE OF GENERAL COUNSEL

Dear Mr. Norton:

On behalf of Francine Busby for Congress ("the Committee"), I write pursuant to 2 U.S.C. § 437f (2005), to request an advisory opinion from the Commission. Because the Committee is involved in an election to be held on April 11, 2006, I respectfully request that the Commission render a written opinion within 20 days of receiving this letter, pursuant to 2 U.S.C. § 437f(a)(2).

The Committee is the principal campaign committee of Francine Busby, who is a candidate for Congress in California's 50th District. She is a candidate both in a special election to replace former Congressman Randy "Duke" Cunningham for the remainder of the 109th Congress, and in the regular primary election to nominate a party candidate for the same seat in 110th Congress.

Under California law, the special election¹ to replace Congressman Cunningham for the remainder of the 109th Congress will be held on April 11. That election is open to all qualified candidates, regardless of party affiliation. If a candidate receives a majority of the votes cast, she is declared the winner. If no candidate receives a majority of the votes cast, then a runoff election is held among the top vote-getters of each qualified political party.

Should a runoff election be required, it will be held on June 6 – the same day as the primary election to nominate candidates for election to the same seat for the 110th Congress. Unlike the special election, the regular primary election is a partisan election, with each party nominating its own candidate for the November 7 general election.

¹ Under California election law this election is referred to as a "primary" election. Because the election may result in the election of a candidate to the office of Representative to the Congress, it is considered under Commission regulations to be a "general" election. 11 CFR § 100.2.

The Committee seeks guidance regarding the application of the Millionaires' Amendment, Part 400 of the Commission's regulations, to this set of facts. Specifically, it wishes to confirm that the Commission's regulations require that candidates aggregate all expenditures made in the special election and the regular primary election when determining their expenditures from personal funds under 11 C.F.R. § 400.4. Were this not the case, a candidate with personal funds to spend could "assign" them to the June 6 primary while benefiting in the run-off held that same day, and yet deny his or her opponents of the other party in the special election to relief through increased contribution limits.

The Millionaires' Amendment applies separately to each "election cycle," 11 C.F.R. § 400.2(a). However, these rules do not account for the special situation of two simultaneous elections involving the same office. For purposes of the Millionaire's Amendment, the regulatory issue is whether to aggregate the "wealthy candidate's" expenditures, or rather to allow that candidate to arbitrarily assign the spending to one or another of the elections. On this choice hinges the availability of relief, as contemplated by the law, for the opposing candidate in one of the elections—a candidate no less affected by these expenditures simply because they are "assigned" to one and not to the other.

Rather than to invite a candidate to engage in an obvious fiction and avoid the clear intent of the amendment, the Commission should instead require that the all expenditures from personal funds in the special election and primary election be aggregated, thus allowing an opposing candidate in the special election to claim the increased limits even if the wealthy candidate "assigns" the personal spending to the primary election.

This is a reasonable reading of the regulation and statute, and is consistent with the broad purpose of the Millionaires' Amendment, which is to provide relief "to candidates who are facing self-financed candidates ..." Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates, 68 Fed. Reg. 3,970 (2003).

Moreover, when enforcing the Act's contribution limits, the Commission has generally construed them, as sound policy dictates, to meet the demands of special circumstances. For example, even though the special primary election and special general election are separate "elections" for the purpose of the contribution limits, they are treated as a single general election for purposes of the party coordinated expenditure limits. *See* Advisory Opinion 1983-16. The Commission exercised its authority to interpret its rules to serve the underlying purpose of the statute, which in that case was to limit party coordinated spending.

Here, the interpretation sought by the Committee would fulfill the Congressional intent of providing Ms. Busby access to increased limits when personal spending, by an opponent, exceeds the triggering threshold. That the expenditures may be assigned to one rather than the other election should not matter here: when a candidate runs in two elections simultaneously, every expenditure has a dual purpose, advancing the candidate's prospects in both elections. Under the most extreme set of circumstances, those expenditures motivate the same voters to cast ballots to elections to the same office, perhaps even on the same day. A contrary interpretation, willfully blind to the realities of these special conditions, invites circumvention of the law and undermines Congress' purpose in enacting the Amendment.

We appreciate the Commission's immediate consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "C. B. Hall". The signature is fluid and cursive, with a long horizontal stroke extending from the middle of the name.

Brandon Hall
Campaign Manager
Francine Busby for Congress